

## **BEFORE THE DIVISION OF INSURANCE**

### **STATE OF COLORADO**

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#### **FINAL AGENCY ORDER O-05-002**

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#### **IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF AETNA HEALTH INC.,**

##### **Respondent**

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**THIS MATTER** comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of Aetna Health Inc. (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report dated March 12, 2004 (the "Report"), relevant examiner work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

##### **FINDINGS OF FACT**

1. At all relevant times, the Respondent was a corporation licensed by the Division as a health maintenance organization.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on March 12, 2004, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 2002 to December 31, 2002.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners handbook. The Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiners prepared the Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined, or as ascertained from the testimony of the Respondent's officers or agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report.
7. The Commissioner has fully considered and reviewed the Report, all of Respondent's submissions and rebuttals, and all relevant portions of the examiner's work papers.

### **CONCLUSIONS OF LAW AND ORDER**

8. Unless expressly modified in this Final Agency Order (the "Order"), the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue A1 concerns the following violation: Failure, in some instances, to provide a complete response to examiners' inquiries. The Respondent shall provide evidence that it has modified its procedures to ensure that complete responses to examiners' inquiries regarding utilization review are provided in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
10. Issue A2 concerns the following violation: Failure, in some instances, to maintain records required for market conduct purposes. The Respondent shall provide evidence that it has revised its procedures to ensure that records required for market conduct purposes are maintained in compliance with Colorado insurance law.
11. Issue E1 concerns the following violation: Failure to include the correct time frame for processing expedited appeals. The Respondent shall provide evidence that it has revised its certificate of coverage forms to reflect the correct time frame for processing expedited appeals to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

12. Issue E2 concerns the following violation: Failure to provide a complete and accurate description of the required hospice care benefits. The Respondent shall provide evidence that it has revised all certificate of coverage forms to include a correct and complete description of the required hospice care benefit to ensure compliance with Colorado insurance law.
13. Issue E3 concerns the following violation: Failure to provide for continued coverage of a condition after a member has refused a recommended procedure or treatment. The Respondent shall provide evidence that it has revised all affected forms to provide for continued coverage of a condition regardless of whether or not a member has refused a recommended procedure or treatment to ensure compliance with Colorado insurance law.
14. Issue E4 concerns the following violation: Failure to include allowable amendments to large group plans only in the instances permitted by law. The Respondent shall provide evidence that it has revised its group agreement to include only the allowable provisions for amendment of a group contract to ensure compliance with Colorado insurance law.
15. Issue E5 concerns the following violation: Failure to include coverage for feeding appliances for newborns with cleft lip or cleft palate or both. The Respondent shall provide evidence that it has revised its certificate of coverage form to include coverage for feeding appliances for newborn children with cleft lip or cleft palate to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
16. Issue E6 concerns the following violation: Failure to provide mandated coverage of therapies for treatment of congenital defects and birth abnormalities for covered children under five (5) years old. The Respondent shall provide evidence that it has revised its certificate of coverage and schedule of benefits forms to allow coverage of therapies for chronic conditions for children under five (5) years of age to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
17. Issue H1 concerns the following violation: Failure, in some instances, to refund unearned premium in a prompt manner. The Respondent shall provide evidence that it has revised its procedures to ensure that refunds required as a result of a cancellation of group coverage are provided promptly to ensure compliance with Colorado insurance law.
18. Issue J1 concerns the following violation: Failure, in some instances, to pay eligible charges or to request the additional information needed to properly

adjudicate the claims. The Respondent shall provide evidence that it reviewed and modified its quality controls to ensure that its claims processing staff is properly trained to make appropriate decisions and thus avoid denying eligible claims in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

19. Issue J2 concerns the following violation: Failure, in some instances, to process claims accurately. The Respondent shall provide evidence that it reviewed and modified its claims processing quality controls to ensure that all claims are investigated properly to determine the proper allocation of benefits in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
20. Issue J3 concerns the following violation: Failure, in some instances, to pay, deny, or settle claims within the time frames required by law. The Respondent shall provide evidence that it has revised its procedures to ensure that all clean electronic claims are paid, denied, or settled within thirty (30) days; all clean non-electronic claims are paid, denied, or settled within forty-five (45) days; and except where fraud is involved, all claims are paid, denied, or settled within ninety (90) days in compliance with Colorado insurance law.
21. Issue J4 concerns the following violation: Failure, in some instances, to pay interest and/or penalty on claims not paid, denied, or settled within the time frames required by law. The Respondent shall provide evidence that it has revised its procedures to ensure that interest and/or penalties are paid for all claims not paid or settled within the required time periods in compliance with Colorado insurance law. Respondent shall perform a self-audit of past due interest and/or penalties not paid as they relate to this violation for the time period beginning January 1, 2002 to the date of this Order. Respondent shall submit a summary of the findings to the Division on or before November 1, 2004.
22. Issue K1 concerns the following violation: Failure, in some instances, to include correct approval requirements in utilization review approval letters. The Respondent shall provide evidence that it has revised its procedures to ensure that approval letters sent to members and providers contain only those requirements for approval as allowed by Colorado insurance law.
23. Issue K2 concerns the following violation: Failure, in some instances, to include all the required elements on utilization review denial notification letters. The Respondent shall provide evidence that it has revised its utilization review denial procedures to ensure that written notification letters for adverse determinations include all the required elements in compliance

with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

24. Issue K3 concerns the following violation: Failure, in some instances, to make prospective utilization review determinations within the time frame allowed by Colorado insurance law. The Respondent shall provide evidence that it has revised its procedures to ensure that utilization review determinations are made within the time frame required to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
25. Issue K4 concerns the following violation: Failure, in some instances, to provide telephone and/or written notification of adverse prospective utilization review denials within the time frames required by Colorado insurance law. The Respondent shall provide evidence that it has revised its procedures to ensure that telephone and/or written notice of adverse utilization review determinations is provided within the time frame required by Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
26. Issue K5 concerns the following violation: Failure, in some instances, to provide telephone notice of utilization review approvals within the time frame required by Colorado insurance law. The Respondent shall provide evidence that it has revised its procedures to ensure that telephone notice of utilization review approvals is provided within the time frame required by Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
27. Issue K6 concerns the following violation: Failure, in some instances, to include a consultation with an appropriate clinical peer when evaluating first level appeals. The Respondent shall provide evidence that it has revised its procedures to ensure that all first level appeals include a consultation with an appropriate clinical peer in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
28. Issue K7 concerns the following violation: Failure, in some instances, to provide written notification of first level appeal decisions within the time frames required by law. The Respondent shall provide evidence that it has revised its procedures to ensure that all first level appeal written notifications are provided with the twenty (20) day time frame as required by Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

29. Issue K8 concerns the following violation: Failure to include all required elements in written notification letters sent to members and providers. The Respondent shall provide evidence that it has revised its procedures to ensure that level one written notification letters contain all necessary elements in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
30. Issue K9 concerns the following violation: Failure, in some instances, to schedule and hold a review meeting within forty-five (45) working days of receiving a request from a covered person for a second level review or failure to notify the covered person in writing at least fifteen (15) working days in advance of the review date. The Respondent shall provide evidence that it has revised its procedures to ensure that review meetings are held within the forty-five (45) working day time frame and that the covered person is notified of the meeting date at least fifteen (15) working days prior to that date in compliance with Colorado insurance law.
31. Issue K10 concerns the following violation: Failure, in some instances, to include health care professionals with appropriate expertise in the second level review panels. The Respondent shall provide evidence that it has revised its procedures to ensure that health care professionals with appropriate expertise comprise a majority of the persons involved in second level panel review meetings in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
32. Issue K11 concerns the following violation: Failure, in some instances, to provide prior notification to members of the presence of company attorneys at second level review meetings. The Respondent shall provide evidence that it has revised its procedures to ensure that covered persons are given prior notification of the presence of attorneys at review meetings in compliance with Colorado insurance law.
33. Issue K12 concerns the following violation: Failure, in some instances, to include all required elements in written notifications of second level appeal determinations. The Respondent shall provide evidence that it has revised its procedures to ensure that written notification of second level appeal determinations contain all required elements to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
34. Pursuant to § 10-1-205(3)(d), C.R.S., Respondent shall pay a civil penalty to the Division in the amount of twenty-two thousand and 00/100 dollars (\$22,000.00) for the cited violations of Colorado law. This fine represents a

combined fine for the cited violations of Colorado law. This fine was calculated in accordance with Division guidelines for assessing penalties and fines, including Division bulletin no. 1-98, issued on January 1, 1998.

35. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related order.
36. Unless otherwise specified in this Order, all requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Copies of any rate and form filings shall be provided to the rate and forms section with evidence of the filings sent to the market conduct section. All audits shall be performed in accordance with Division's document, 'Guidelines for Self Audits Performed by Companies' presented at the market conduct examination exit meeting. Unless otherwise specified in this Order, all audit reports must be received within ninety (90) days of the Order, including a summary of the findings and all monetary payments to covered persons.
37. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions, as provided for by law.
38. Copies of the examination report, the Respondent's response, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

**WHEREFORE:** It is hereby ordered that the findings and conclusions contained in the final examination report dated March 12, 2004, are hereby adopted and filed and made an official record of this office, and the above Order is hereby approved this 12<sup>th</sup> day of July, 2004.

A handwritten signature in black ink, reading "Kirk R. Yeager". The signature is written in a cursive style with a horizontal line underneath it.

Kirk R. Yeager,  
Deputy Commissioner of Market Regulation



**CERTIFICATE OF MAILING**

I hereby certify that on the 12th day of July, 2004, I deposited the within **FINAL AGENCY ORDER NO. O-05-002 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF AETNA HEALTH, INC.**, in the United States Mail with postage affixed and addressed to:

Michael Mulcahy, President  
Aetna Health Inc.  
6430 S. Fiddlers Green Circle  
Englewood, CO 80111

David M. Stitzel, Compliance Manager  
Aetna Health Inc.  
6430 S. Fiddlers Green Circle  
Englewood, CO 80111

A handwritten signature in black ink, reading "Dolores Arrington". The signature is fluid and cursive, with the first name "Dolores" and last name "Arrington" clearly distinguishable.

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Dolores Arrington, MA, AIRC  
Market Conduct Section  
Division of Insurance